

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE STEPHENS REVOCABLE TRUST, AS AMENDED,
DATED FEBRUARY 14, 1994.

SONA HEGUY,
Plaintiff/Appellant,

v.

FRANCES L. STEPHENS,
Defendant/Appellee.

No. 2 CA-CV 2019-0102
Filed July 31, 2020

Appeal from the Superior Court in Pima County
No. PB20180591
The Honorable Kenneth Lee, Judge

REVERSED AND REMANDED

COUNSEL

Becker & House PLLC, Scottsdale
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By J. Emery Barker

and

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OPINION

Judge Brearcliffe authored the opinion of the Court, in which Presiding Judge Staring and Chief Judge Vásquez concurred.

B R E A R C L I F F E, Judge:

¶1 Appellant Sona Heguy appeals from the trial court’s denial of her Petition for Leave to File Complaint of Financial Exploitation of a Vulnerable Adult under A.R.S. § 46-456. Heguy contends the court abused its discretion and ruled on the merits of the complaint prematurely, thereby denying her due process. Appellee Frances Stephens contends the court was correct in dismissing Heguy’s petition for “lack of standing” because her claims were excluded under § 46-456(A)(2) and (A)(4). We reverse and remand for further proceedings.

Factual and Procedural Background

¶2 On October 1, 2018, Heguy filed a Petition for Leave to File Complaint of Financial Exploitation of a Vulnerable Adult, attaching the draft complaint to her petition. According to that proposed complaint, Heguy is the adult daughter and heir of Keith Stephens, who died in June 2017. At the time of his death, Keith was married to Frances Stephens. In February 1994, Keith and Frances established The Stephens Revocable Trust (“the Trust”). The Trust was amended several times thereafter, including by the First Amendment and Restatement, dated December 30, 2010. In 2013, 2014, and 2015, the Trust was again amended, with the last amendment being the Second Amendment to the Second Restatement in August 2015. In the preceding 2014 First Amendment to the Second Restatement of the Trust, Keith was removed as a trustee, leaving Frances as sole trustee of the Trust. Frances was also named as her husband’s agent under a durable general power of attorney dated December 30, 2010, effective immediately, and thereafter under a durable power of attorney for health care dated September 20, 2012, effective upon Keith’s incapacity.

¶3 Keith suffered a stroke while vacationing abroad in 2011, and never fully physically recovered. He underwent “occupational therapy for cognitive therapy as well as therapy for activities of daily living” and was advised not to drive again. Thereafter, in 2012, he sold his automobile supply company for approximately \$5,000,000.

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¶4 At several points in 2013, Keith complained of, and was treated for “memory issues,” and, in a medical visit in December 2013, it was noted that he was “not oriented to time, place, or person.” After other health problems in the following years, Keith was placed into a “locked memory care unit” at a senior living facility. Keith suffered from dementia and needed care with daily living activities. Between 2014 and 2016, without Keith’s knowledge, Frances used the Trust’s funds to buy each of her children a home, and to fund European and Japanese vacations for her children. She also used the Trust’s funds to pay off debts and other obligations of Heguy’s daughter.

¶5 In a contested guardianship proceeding in May 2017, a month before his death, Keith was found to be incapacitated. The trial court noted substantial dissipation in the assets of the Trust and appointed a third party as temporary conservator to complete an accounting of the Trust estate. Before the accounting was completed, Keith passed away. Following Keith’s death, Frances exercised the “limited testamentary power of appointment” of the Trust to appoint all of the Trust property to persons other than Heguy – Keith’s only surviving child from his first marriage – and a nephew.

¶6 In addition to the factual allegations in the complaint, Heguy asserted that she was “entitled to bring this action pursuant to A.R.S. § 46-456(G).” She alleged that her father had been a vulnerable adult and that Frances had served him in a position of trust as his agent under a durable general power of attorney. She asserted that none of the financial transactions benefitting Frances’s relatives had been for the benefit of the marital community. She instead alleged that those transactions had not been in Keith’s best interests and that Frances had “violated her duty to him.” The complaint made no allegation as to whether any of the transactions had been specifically authorized by the Trust. Heguy sought damages and invalidation of Frances’s acts as trustee.

¶7 In her response to the petition, Frances did not dispute Heguy’s claim to being a statutorily-defined interested person. Rather, she asserted that the proposed complaint did not state a claim because each of the transactions identified in the proposed complaint had been specifically authorized by the Trust instruments and had been for the benefit of the marital community. Frances therefore urged the trial court to deny the petition and bar the complaint.

¶8 Following a hearing, the trial court denied Heguy leave to file the complaint, recognizing first that under § 46-456(A)(2) and (A)(4):

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An action under the statute does not include transactions authorized in a valid trust instrument that is executed by the vulnerable adult as a settlor and does not include acts by a spouse where the transaction furthers the interest of the marital community.

And then determined that:

Consistent throughout, commencing with the original Trust through the various amendments and restatements, was the powers of appointment by the surviving Trustor. Under the power of appointment, the surviving Trustor could distribute the Trust assets to one or more of the Trustor's issue in equal or unequal shares. Thus, any of the Trustor's issue could be excluded from receiving any distribution from the Trust, under the power of appointment.

And:

Under the admittedly valid power of appointment that existed in any version of the Trust, that preceded 2011, Frances Stephens could exclude the Petitioner. Also, any transaction done pursuant to her powers under the Trust or as the decedent's spouse in furtherance of the interests of the marital community are not subject to the vulnerable adult statute.

Based on the above, IT IS ORDERED the Petition for Leave to File a Financial Exploitation Complaint is denied.

Heguy appealed that denial, and we have jurisdiction under A.R.S. § 12-2101(A)(1) and (A)(9).

Analysis

¶9 We review the trial court's exercise of discretionary acts for abuse of that discretion. *Cf. Tumacacori Mission Land Dev., Ltd., v. Union Pac.*

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R.R. Co., 231 Ariz. 517, ¶ 4 (App. 2013); *Romo v. Reyes*, 26 Ariz. App. 374, 375 (1976). We review the court’s application of the law *de novo*. See *Freeman v. Sorchych*, 226 Ariz. 242, ¶ 11 (App. 2011); *In re Estate of Headstream*, 214 Ariz. 530, ¶ 9 (App. 2007).

¶10 A person who serves in a position of trust and confidence to a “vulnerable adult shall use the vulnerable adult’s assets solely for the benefit of the vulnerable adult and not for the benefit of the person who is in the position of trust and confidence to the vulnerable adult or the person’s relatives.” § 46-456(A). Section 46-456(G) allows a vulnerable adult or “the duly appointed conservator or personal representative of the vulnerable adult’s estate” to file a civil suit for financial exploitation. “[A]ny other interested person . . . may petition the court for leave to file an action on behalf of the vulnerable adult or the vulnerable adult’s estate.” *Id.* An “[i]nterested person” includes any trustee, heir, devisee, child, spouse, creditor, beneficiary, person holding a power of appointment and other person who has a property right in or claim against a trust estate or the estate of a decedent.” A.R.S. § 14-1201(33).

¶11 Contrary to Frances’s assertion, the trial court here did not dismiss Heguy’s petition for “lack of standing” to bring her claims. Standing to file an exploitation complaint – that is, whether Heguy was an “interested person” as required under § 46-456(G) and defined by § 14-1201(33) – was not in dispute. As Keith’s child and statutory heir, Heguy was an interested person and entitled to bring a complaint for financial exploitation upon receiving court approval. Rather, the court determined, as a matter of law, that Heguy could not ultimately prevail on her claims. In agreeing with Frances’s opposition, the court determined that, under § 46-456(A)(2) and (A)(4), the acts complained of in Heguy’s proposed complaint had been either authorized by the Trust documents or carried out by Frances for the benefit of the marital community, or both.

¶12 The statutory scheme allowing for financial exploitation complaints is a component of the Adult Protective Services Act (APSA). See A.R.S. §§ 46-101 to 46-908. This Act is protective and remedial. See *Estate of McGill ex rel. McGill v. Albrecht*, 203 Ariz. 525, ¶¶ 6, 14 (2002), *disapproved of on other grounds by Delgado v. Manor Care of Tucson AZ, LLC*, 242 Ariz. 309, ¶ 25 (2017). Arizona courts broadly construe APSA to give effect to each of its provisions. See *In re Estate of Wyttenbach*, 219 Ariz. 120, ¶ 15 (App. 2008).

¶13 Although an interested person seeking to file a financial exploitation complaint must seek leave of court to file the complaint under APSA, see § 46-456(G), the statute does not guide courts in resolving such

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requests. We find the discussion in the Arizona Estate Planning and Probate Handbook on this subject sensible. *See* Darren T. Case et al., *Arizona Practice Series: Estate Planning and Probate Handbook* § 9:8 (2019). As the authors state:

Under A.R.S. § 46-456(G), the court should freely grant interested persons leave to file a financial exploitation claim. The statutory language succinctly states that the interested person may seek leave to file “on behalf of the vulnerable adult or the vulnerable adult’s estate” if the claim “is not file[d] by the vulnerable adult or the duly appointed conservator or personal representative of the vulnerable adult’s estate.”

Id. Not much need be shown to obtain that leave of court:

[T]he sole hurdle an interested person must meet (beyond showing that he or she is in fact an interested person) is that the vulnerable adult or his or her estate did not file a claim. The interested person might also provide an explanation for the court as to why the vulnerable adult or his or her estate would not be expected to file a claim. Beyond that the statute imposes no additional duty on the interested person before the court may grant leave.

Id. “Given Arizona’s strong public policy in favor of protecting vulnerable adults,” *see id.*, a court should not prematurely foreclose such complaints:

A request for leave to file a financial exploitation claim is not a trial on the merits, nor should the interested person be required to prove his or her likely success on the merits. The statute makes no such demand on the interested person, and procedurally that kind of an inquiry would be premature. If an interested person has leave to file the claim, then the merits of the claim can be tested under normal

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procedural rules once the interested person files
the claim.

Id. The merits of the claim or of any denials or affirmative defenses should not be evaluated by the trial court at the pre-pleading stage; that is, at the time the complaint is first proposed. *Id.*

¶14 Nonetheless, even with such a liberal standard of allowing such pleadings, the authors acknowledge the trial court’s gatekeeper function:

The court must determine whether the vulnerable adult or his or her estate has filed or may file a claim. The court might determine, for example, whether a vulnerable adult’s personal representative or conservator would be the defendant of a financial exploitation claim and therefore precluded from filing the claim. The court might also be called upon to determine whether a person meets the definition of “interested person.” The court also may be required to determine which interested person among multiple parties is the most appropriate to act on behalf of the vulnerable adult or his or her estate.

Id.

¶15 Although not controlling, the foregoing persuades this court of the trial court’s proper role under § 46-456(G). As a matter of first impression, *see In re Estate of Ganoni*, 238 Ariz. 144, ¶ 19 (App. 2015), we conclude, then, that when leave of court is sought to file a financial exploitation complaint, the court should determine whether the petitioner is an interested person under §§ 46-456(G) and 14-1201. If not, the court may summarily deny the petition. *Cf. Wyttenbach*, 219 Ariz. 120, ¶ 27 (court properly denied amendment to add petitioner without statutory standing). If the petitioner is an interested person under the statute, the court should determine whether another with priority to file an exploitation complaint – “the vulnerable adult or the duly appointed conservator or personal representative of the vulnerable adult’s estate” – has already filed or is likely to file such a complaint. § 46-456(G). If so, the court may summarily deny the petition. *See Darren T. Case et al., supra* § 9:8. The court should not, as the trial court did here, address the merits of the proposed

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complaint; it should, solely for purposes of granting or denying leave to file the complaint under § 46-456(G), accept the factual allegations of the proposed complaint as true, and without regard to potential defenses. *See id.*

¶16 Even under such a procedure, the complaint remains subject to substantive examination. Infirmities in the allegations in the complaint and the merits of any defenses, resolvable as a matter of law, may be raised ultimately by the party opposing the petition under Rules 12(b) or 56, Ariz. R. Civ. P., or any other applicable mechanism as to any civil complaint once the complaint is filed. *See* Ariz. R. Prob. P. 4 (“The Civil Rules apply to probate proceedings unless they are inconsistent with these probate rules or . . . Title 14.”); *cf. In re Estate of Snure*, 234 Ariz. 203, ¶¶ 4, 14 (App. 2014) (party may file Rule 12(b) motion to dismiss claim in probate proceeding); *In re Sherer’s Estate*, 10 Ariz. App. 31, 37 (1969) (Rule 56 summary judgment motion may be properly granted in probate matter). This procedure allows a statutorily proper petitioner to bring actions to protect vulnerable adults, yet still preserves the ability, early in the process, to challenge a baseless or flawed complaint.

¶17 Here, the trial court went beyond the permissible examination outlined above. The court examined the proposed complaint and determined—in light of the defenses she asserted—that Frances had acted on behalf of the marital community and her acts had been specifically authorized by the Trust documents. Consequently, the court determined that Heguy could not prevail. Such determinations, to some extent fact-bound, but nonetheless going to the merits of the complaint, should have been reserved for a timely Rule 12(b) motion to dismiss or motion for summary judgment under Rule 56 after the complaint had been filed. Because the court addressed the merits of the proffered complaint as grounds for denying Heguy leave to file the financial exploitation complaint, it erred. *Cf. Tumacacori Mission Land Dev.*, 231 Ariz. 517, ¶ 4; *Romo*, 26 Ariz. App. at 375. And, because it did not expressly address the far more limited matters outlined above, upon remand it should do so in the first instance.

Disposition

¶18 For the foregoing reasons, the judgment of dismissal is reversed, and this matter is remanded to the trial court for further proceedings consistent with this opinion. Stephens requested her attorney fees and costs on appeal, but because she is not the prevailing party on appeal, her request is denied. *See* A.R.S. § 12-342. Heguy did not request

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fees, but is granted her costs on appeal under § 12-342 as the prevailing party upon compliance with Rule 21, Ariz. R. Civ. App. P.